

## Federal Railroad Administration, DOT

## § 269.5

studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction. Final design and engineering work will also be initiated for the down-selected project(s). To be down-selected a project must appear to meet the project eligibility standards contained in § 268.11 (b), rate highly in the project selection criteria specified in § 268.17, be judged by FRA to have a good chance of being constructed with the Federal funds authorized for this program, and be successfully operated by a public/private partnership.

(b) Only one project will be selected in Phase IV of the Maglev Deployment Program and be eligible for any Federal construction funds that Congress chooses to make available. That one project must meet each and every project eligibility standard contained in § 268.11 (b). If more than one project down-selected in Phase III and funded through Phase IV meets all of these standards, then FRA will evaluate and compare the eligible projects according to the set of project selection criteria contained in § 268.17.

(c) In reviewing competing projects under the project eligibility standards and project selection criteria, the FRA will exercise particular vigilance regarding the following elements of the preconstruction planning process, although not to the exclusion of others:

(1) The credibility of the demand and revenue forecasts, cost estimates, and benefit/cost comparisons; and

(2) The credibility of the financial plan.

(d) FRA intends to make periodic reviews of the processes and products of grant recipients. Such reviews may include, at the FRA's option, reviews at key milestones in the preparation of project descriptions.

### PART 269—ALTERNATE PASSENGER RAIL SERVICE PILOT PROGRAM

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AUTHORITY: Sec. 214, Div. B, Pub. L. 110-432; 49 U.S.C. 24711; and 49 CFR 1.49.

SOURCE: 76 FR 77724, Dec. 14, 2011, unless otherwise noted.

#### § 269.1 Purpose.

The purpose of this part is to carry out the statutory mandate set forth in 49 U.S.C. 24711 requiring FRA to develop a pilot program that permits a railroad that owns infrastructure over which Amtrak operates a passenger rail service route to petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak.

#### § 269.3 Application.

(a) *Certification.* This part will not be applicable to any railroad, unless and until, the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program developed by this part. FRA will provide notice of the certification on the FRA public Web site upon receipt.

(b) *Route limitations.* The pilot program developed by this part will not be made available to more than two Amtrak intercity passenger rail routes.

(c) *Time limitations.* Any railroad awarded a contract to provide passenger rail service under the pilot program developed by this part shall only provide such service for a period not to exceed either five years after October 16, 2008, or a later date authorized by statute.

#### § 269.5 Definitions.

As used in this part—

*Act* means the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432, Division B (Oct. 16, 2008)).

*Administrator* means the Federal Railroad Administrator, or the Federal Railroad Administrator's delegate.

*Amtrak* means the National Railroad Passenger Corporation.

*File and Filed* mean submission of a document under this part on the date the document was postmarked, or the date the document was emailed to FRA.

*Financial plan* means a plan that contains, for each Federal fiscal year fully

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or partially covered by the bid: An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and a statement of the assumptions underlying the financial plan's contents.

*FRA* means the Federal Railroad Administration.

*Operating plan* means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan's contents.

*Passenger rail service route* means those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) or in 49 U.S.C. 24702.

*Petitioner* means a railroad, other than Amtrak, that has submitted a petition to FRA under section 269.7 of this part.

*Railroad* means a rail carrier or rail carriers, as defined in 49 U.S.C. 10102(5).

*Secretary* means the Secretary of the U.S. Department of Transportation.

### § 269.7 Petitions.

(a) *In General.* A railroad that owns infrastructure over which Amtrak operates a passenger rail service route may petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(c) of this part.

(b) *Petition Requirements.* Each petition shall:

(1) Be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification pursuant to § 269.3(a) of this part using the fol-

lowing method: email to [Prria214@dot.gov](mailto:Prria214@dot.gov);

(2) Describe the petition as a "Petition to Provide Passenger Rail Service under 49 CFR part 269"; and

(3) Describe the route or routes over which the petitioner wants to provide passenger rail service and the Amtrak service that the petitioner wants to replace.

(c) *Future petitions.* In the event that a statute extends the time period under which a railroad may provide passenger rail service pursuant to the pilot program developed by this part, petitions under this section shall be filed with FRA no later than 60 days after the later of the enactment of such statutory authority or the Secretary's issuance of the certification under § 269.3(a), and shall otherwise comply with the requirements of this part.

### § 269.9 Bid process.

(a) *Amtrak notification.* FRA will notify Amtrak of any eligible petition filed with FRA no later than 30 days after FRA's receipt of such petition.

(b) *Bid requirements.* A petitioner and Amtrak must both file a bid with FRA to provide passenger rail service over the route to which the petition relates no later than 60 days after the petition deadline established by § 269.7 of this part using the following method: email to [Prria214@dot.gov](mailto:Prria214@dot.gov). Each such bid must:

(1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal's compliance with the requirements described in § 269.13(b) of this part;

(2) Describe how the bidder would operate the route. This description must include, but is not limited to, an operating plan, a financial plan and, if applicable, any agreement(s) necessary for the operation of passenger service over right-of-way on the route that is not owned by the railroad. In addition, if the bidder intends to generate any revenues from ancillary activities (*i.e.*, activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental